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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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<b>2001 Senate Bill 9</b>	<b>Senate Substitute Amendment 1</b>
Memo published: May 4, 2001                      Contact: Ronald Sklansky, Senior Staff Attorney (266-1946)	

The substitute amendment makes the following changes to 2001 Senate Bill 9.

**A. PRODUCTION-MONEY SECURITY INTEREST**

Current law, in limited circumstances, provides that a creditor who has a perfected security interest in crops for new value given to enable the debtor to produce those crops has a priority in the collateral over an earlier perfected security interest. The priority applies only in a case in which the “new value” security interest is given not more than three months before the crops become growing crops and only if an earlier perfected security interest secures obligations due more than six months before the crops become growing crops. [See s. 409.312 (2), Stats.]

The drafters of the Model Act report that the priority contained in s. 409.312 (2), Stats., has been thought to be of little value for its intended beneficiaries and has been left out of the Model Act. In its place, the drafters provided an option for the states to consider. This option creates a production-money security interest and establishes this interest’s priority over other security interests. [See Appendix II, Model Provisions for Production-Money Priority, in the Model Act.]

The substitute amendment incorporates portions of Appendix II of the Model Act regarding a production-money security interest. A production-money obligation occurs when a creditor gives new value to a debtor in order to allow the debtor to produce crops, if the new value is in fact used for the production of the crops. In this case, a production-money security interest will be created and that interest will have priority over a conflicting, nonproduction-money security interest in the same crops if the following conditions are met:

1. The production-money security interest is perfected by filing when new value is first given.
2. The production-money secured party sends a notice to the holder of the conflicting security interest not less than 20 or more than 30 days before the production-money secured party

first gives new value, if the holder of the conflicting security interest had filed a financing statement before the date of the filing made by the production-money secured party.

3. The notification sent by the production-money secured party states that the production-money security interest is expected to be acquired and provides a description of the crops, the names and addresses of all the parties involved, the date on which the transaction would take place and the maximum amount of new value to be provided.

[See proposed ss. 409.102 (1) (pu) and (pv), 409.1035 and 409.3242, Stats., as contained in the substitute amendment.]

### **B. STATUTORY DAMAGES**

Senate Bill 9 creates new statutory damages in the amount of \$500 in each case from a person that does any of the following:

1. Fails to properly release collateral.
2. Files a record that the person is not entitled to file.
3. Fails to file or send a required termination statement.
4. Fails to respond with an appropriate explanation regarding, or a waiver of, a liability for a deficiency following the disposition of collateral.
5. Fails to respond to a request for an accounting.

[See s. 409.623 (5) and (6), Stats., as contained in Senate Bill 9.]

The substitute amendment deletes the statutory damages contained in Senate Bill 9.

### **C. WORKER'S COMPENSATION**

The substitute amendment creates s. 409.109 (4) (cm), Stats., to provide that ch. 409, Stats., does not apply to an assignment of a claim or right to receive compensation for injuries or sickness under a worker's compensation or worker's disability statute under any state.

### **D. USE OF SOCIAL SECURITY NUMBERS**

Senate Bill 9 does not require that a financing statement be in a particular format. However, the bill provides that if a statutory form is used, a filing office must accept it. The statutory forms contained in Senate Bill 9 include places for the indication of a debtor's Social Security number. [See proposed s. 409.521, Stats., as contained in Senate Bill 9.]

The substitute amendment specifically provides that the presence or absence of a Social Security number on a form of record providing for the insertion of a Social Security number must not affect the decision of the filing office to accept or refuse the record for filing. In other words, the statutory forms will indicate that the inclusion of a Social Security number is optional and that a form not containing a

Social Security number nevertheless must be accepted by a filing officer. [See proposed ss. 409.520 (1) and 409.521, Stats., as contained in the substitute amendment.]

#### **E. APPROPRIATIONS**

The substitute amendment creates a new appropriation by increasing the dollar amount for the appropriation to the Department of Financial Institutions by \$442,600 for fiscal year 2000-01 for the administration of ch. 409, Stats., including an increase in the authorized full-time employment (FTE) project positions for the department by 3.0 program assistant positions for the period ending on June 30, 2002.

#### **F. TERMINATION STATEMENT**

Current law provides that there is no fee for the filing of a termination statement with regard to a secured transaction under ch. 409, Stats. [See s. 409.404 (3), Stats.]

Senate Bill 9 provides that the fee for filing and indexing a record will be prescribed by filing-office rule. [See proposed s. 409.525 (1), Stats., as contained in Senate Bill 9.]

The substitute amendment specifically provides that there is no fee for the filing of a termination statement. [See proposed s. 409.525 (1m), Stats., as contained in the substitute amendment.]

#### **G. TECHNICAL CHANGE**

The substitute amendment corrects various references by replacing the phrase “1999 Act . . .” with the phrase “2001 Act . . .”

The substitute amendment was adopted, and Senate Bill 9, as amended, was recommended for passage by the Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform by votes of 5 Ayes; and 0 Noes; on May 2, 2001.

RS:tl;ksm